UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte PATRICK THOMAS GREER and CHRISTOPHER A. WIKLOF

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Appeal 2009-006423
Application 09/788,628
Technology Center 2400

_____

Before JOHN A. JEFFERY, JAMES D. THOMAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 18 and 31-56. Claims 1-17 and 19-30 have been canceled. *See* Br. 2. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants invented a method for providing access to product and transactional information over the Internet using encoded data. *See generally* Spec. 4. Claim 35 is reproduced below with the key disputed limitations emphasized:

35. A method of accessing data, comprising:

receiving bar code information encoding a Uniform Code Council (UCC) company identifier and a UCC item identifier; and

*constructing a uniform resource locator (URL) from the received bar code information, wherein at least a portion of the URL comprises the UCC company identifier and the UCC item identifie*r constructed as at least a "www" followed by at least the UCC company identifier and the UCC item identifier.

The Examiner relies on the following as evidence of unpatentability:

| Nerlikar | US 5,629,981 | May 13, 1997 |
| Cragun | US 5,804,803 | Sept. 8, 1998 |

THE REJECTIONS

1. The Examiner rejected claims 35-56[2] under 35 U.S.C. § 102(e)[3] as anticipated by Cragun. Ans. 3-7.[4]

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[2] The Examiner only included claims 18 and 35-49 in the heading of the rejection. *See* Ans. 3. However, since the rejection's body includes a discussion of claims 50-56 (*see* Ans. 6-7), we therefore presume that the Examiner intended to include these claims in the rejection. Accordingly, we deem this error harmless.

[3] Cragun is also available as a reference under 35 U.S.C. § 102(b). The Examiner may have intended to refer to paragraph (b), as this paragraph of § 102 was quoted in paragraph three. *See* Ans. 3.

2. The Examiner rejected claims 18 and 31-34 under 35 U.S.C. § 103(a) as unpatentable over Cragun and Nerlikar. Ans. 7-9.

THE ANTICIPATION REJECTION OVER CRAGUN

Regarding independent claim 35, the Examiner finds that that Cragun discloses all the limitations, including constructing a URL as shown in Figure with: (a) a UCC company identifier, such as 0JPC 310 or yummy.corp.com, and (b) a UCC item identifier, such as the CID in the URL http://peanut.food.com/??CID??&??SIP??. Ans. 3, 9. Appellants argue that these URL examples in Figure 3 do not disclose constructing a URL having a UCC company identifier and UCC item identifier as recited. *See* Br. 11-14.

The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 35 by finding that Cragun constructs a URL from received bar code information, where at least a portion of the URL comprises the UCC company identifier and UCC item identifier?

FINDINGS OF FACT

1. Appellants explain that the Universal Product Code (UPC), the European Article Numbering (EAN), and the Japanese Article Numbering (JAN) systems are administered by the Uniform Code Council (UCC). The

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[4] Throughout this opinion, we refer to the Appeal Brief filed May 6, 2008 and the Examiner's Answer mailed May 16, 2008.

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UCC assigns a five-digit company prefix or company identifier to a manufacturer. The manufacturers are also free to assign a five-digit product identifier code to each retail product. Spec. 2:21-3:5.

    2.   Appellants illustrate a UPC symbol 201 having a first data component (202) known as the number system. The first data component is encoded in parity pattern, including encoding a manufacturer's identification 203 in the left half of the symbol (i.e., "12345") and encoding a product identification 204 on the right half of the symbol (i.e., "67890"). Spec. 8:19-26; Fig. 2.

    3.   Cragun discloses a scanning device 118 can read a code 117, such as a UPC, from an object 115 and converts the code 117 into a URL. Cragun, col. 2, ll. 48-54; col. 3, ll. 56-64; col. 4, ll. 8-9, 15-17, 33-40; col. 5, ll. 53-58; col. 7, ll. 29-34; Figs. 1A, 2.

    4.   Cragun explains that the URL can be in abbreviated form 220, expanded form 230, or data-filled form 240. The data-filled form 240 fills in the expanded form 230 with actual data. For example, the ??LANGUAGE?? keyword in the expanded form is replaced with "LANGUAGE=Spanish" in the data-filled form. Cragun, col. 5, l. 53-col. 6, l. 67; Fig. 2.

    5.   Cragun discloses a UPC "12345-67890" corresponding to the URL, http://yummy.corp.com/??LANGUAGE??. Cragun also discloses UPC "34567-89012" corresponding to the URL, http://peanut.food.com/??CID??&??SID??&SIP??. Cragun, col. 7, ll. 35-47 and col. 8, ll. 16-30; Figs. 3, 6A.

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6. Cragun includes a table listing the abbreviations used for mapping the abbreviated form 220 to the expanded 230 and data-filled 240 form of a URL. "CID" represents a customer identifier, and "SID" represents a Store ID. Cragun, col. 2, ll. 31-35, col. 7, ll. 48-59; Fig. 4.

ANALYSIS

We begin by construing a key disputed limitation of claim 35 which calls for, in pertinent part, constructing a URL from the received bar code information, wherein at least a portion of the URL comprises the UCC company identifier and UCC item identifier. While the Specification does not define the terms, "UCC company identifier" and "UCC item identifier," we must still give this limitation its broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (internal citations omitted).

The Specification explains that a bar code encoded using the UCC system includes a five-digit company identifier assigned to a manufacturer and a five-digit product or item identifier that the manufacturer is free to assign. *See* FF 1. Appellants' Figure 2 illustrates this 5-digit company identifier (left five digits) and product identifier (right five digits) encoded into a UPC symbol. *See* FF 2. In light of the disclosure, an ordinarily skilled artisan would have therefore understood, the term "UCC company identifier" to mean a five-digit company identifier, and the term "UCC item identifier" to mean a five-digit product identifier. With this construction in mind, we turn to Cragun.

Cragun discloses a scanning device that reads a code 117, including a UPC, from an object and converts the code 117 into a URL. FF 3. For example, Cragun discloses the received UPC (e.g., 12345-67890) is converted to a URL (e.g., http://yummy.corp.com/??LANGUAGE??). *See* FF 5. Cragun also discloses receiving a bar code having a UCC company identifier (e.g., "12345") and a UCC item identifier (e.g., "67890"). *See* FF 2, 5. Cragun thus teaches using a UPC (e.g., "12345-67890") to generate a corresponding URL (e.g., http//yummy.corp.com/??LANGUAGE??). Although this URL includes a company name (i.e., yummy.corp.com), the URL does not have the recited UCC company and item identifiers (e.g., "12345", "67890")—a crucial deficiency.

Similarly, the received UPC "34567-89012" in Figure 3 corresponds to the URL, http://peanut.food.com/??CID??&??SID??&SIP??. *See* FF 3, 5. Again, the UPC is used to construct a URL, which may include a company name (e.g., food.com) and a product name (e.g., peanut). *See id.* Moreover, this URL includes "CID" (i.e., a customer identifier), and "SID" (i.e., a Store ID). *See* FF 5-6. But none of these portions of the URL constitute a UCC company and item identifier as recited. Moreover, even if these URLs are converted to a data-filled form URL (*see* FF 4), the CID and SID are not the claimed UCC company and item identifiers. We are therefore constrained to find that Cragun does not disclose every element of claim 35. *See Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Independent claim 48 recites receiving a URL that uses the UCC company identifier as the domain, and independent claim 50 recites constructing a URL with the UCC company identifier therein. For the reasons discussed above, we find that Cragun fails to disclose these limitations.

For the foregoing reasons, we are therefore persuaded that the Examiner erred in rejecting (1) independent claim 35; (2) independent claims 48 and 50 which recite similar limitations; and (3) claims dependent thereon for similar reasons. Since this issue is dispositive of our reversal, we need not address Appellants' other arguments. *See* Br. 11-18.

THE OBVIOUSNESS REJECTION OVER CRAGUN AND NERLIKAR

Regarding independent claim 18, the Examiner finds that Cragun discloses constructing a URL having a UCC company identifier and a UCC item identifier and relies on Nerlikar for the radio frequency (RF) tag recitation. *See* Ans. 8-9. Appellants contend that neither Cragun nor Nerlikar teach constructing a URL having a UCC company and item identifier. Br. 13. The issue is therefore similar to those in connection with claim 35. As discussed above, we are persuaded by Appellants' arguments that Cragun does not disclose constructing a URL comprising both a UCC company identifier and a UCC item identifier. Additionally, Nerlikar was not relied upon (Ans. 8-9)—nor does Nerlikar discuss—generating a URL using the recited UCC identifiers (*see generally* Nerlikar) as required by claim 18.

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We are therefore persuaded that the Examiner erred in rejecting (1) independent claim 18 and (3) claims dependent thereon for similar reasons. Since this issue is dispositive of our reversal of the Examiner's rejection, we need not address Appellants' other arguments. *See* Br. 11-15.

CONCLUSION

The Examiner erred in rejecting (1) claims 35-56 under § 102, and (2) claims 18 and 31-34 under § 103.

ORDER

The Examiner's decision rejecting claims 18 and 31-56 is reversed.

REVERSED

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